SPECIAL ASSESSMENTS UNDER THE POLICE POWER WITHOUT REGARD TO BENEFITS.— The levy of special assessments was first asserted to be an exercise of the police power.[1] But when it was desired to levy such assessments for purposes unconnected with the public health and morals, it was necessary to find some new justification. This was sought in the power of eminent domain. Here also arose a difficulty: the power of eminent domain was exercised upon an individual and not upon the community, and, while the benefit was shared by the entire community, the whole burden was cast upon the individual whose property and money were both taken.[2] Hence, some other justification was rendered necessary for the levying of these assessments. It was found in the taxing power. The entire theory of taxation requires that the taking by the state be in return for protection rendered to the individual. Accordingly, where the tax is special and levied on only a small part of the citizens, they must be compensated by benefits proportionate to the loss sustained by the taking.[3]

These three powers of the state should not be exclusive. If a taking is compensated in money, it may be an exercise of eminent domain. If it is for the protection of public health or morals, it may be legislative action under the less restricted police power into which the principle of benefits does not enter at all.[4] For instance, a Wisconsin municipality recently levied an assessment for building a sewer by the front-foot rule. The Wisconsin courts hold this an invalid method of assessment under the taxing power unless it appears that benefits conferred have been regarded.[5] Yet the Wisconsin Supreme Court allowed it under the police power regardless of any benefits received by the railroad company whose property was assessed. *Chicago, etc. Ry. Co.* v. *City of Janesville*, 118 N. W. 182 (Wis.).

There has been a decided tendency in many courts to refuse to review the acts of the legislatures in levying these assessments.[6] In the case of general taxes affecting the whole state there is little to fear from legislative usurpation. There is a natural protection in the fact that the legislature is taxing its constituents. Special assessments, however, relieve the mass of the citizens at the expense of the few, and are for this reason at least not unpopular measures.[7] The rights of the citizen are therefore subject to serious encroachments if there is no appeal from the legislative decision.[8] Furthermore, though there may be no express inhibition to the states in the federal Constitution against taking private property for public uses without compensation, such taking was undoubtedly against the whole principle of English liberties and was not due process before the Fourteenth Amendment. The United States Supreme Court considers such taking unconstitutional when it amounts to a complete confiscation of the property assessed.[9] It is hard to see why incomplete confiscation to any substantial extent should not stand on the same plane.[10]

---

1 Petition of N. Goddard, 16 Pick. (Mass.) 504.

2 People *v.* Mayor of Brooklyn, 4 N. Y. 419.

3 Illinois Central R. R. Co. *v.* Decatur, 147 U. S. 190, 202. See Canal Trustees *v.* Chicago, 12 Ill. 403.

4 Horbach *v.* Omaha, 54 Neb. 83; Cone *v.* Hartford, 28 Conn. 363; Keese *v.* Denver, 10 Colo. 112; Van Wagoner *v.* Patterson, 67 N. J. L. 455.

5 Sanderson *v.* Herman, 108 Wis. 662.

6 See Spencer *v.* Marchant, 125 U. S. 345, 353.

7 Guest *v.* Brooklyn, 69 N. Y. 506.

8 State *v.* Lewis Co., 82 Minn. 390.

9 Norwood *v.* Baker, 172 U. S. 269; French *v.* Barber Asphalt Co., 181 U. S. 324.

10 See Alleghany *v.* W. Pa. R. R. Co., 138 Pa. St. 375; Sears *v.* Street Comm'rs, 173 Mass. 350. But *cf.* Atlanta *v.* Hamlin, 96 Ga. 381.